

MINUTES
BOARD OF SUPERVISORS
COUNTY OF YORK

Adjourned Meeting
June 12, 2001

6:00 p.m.

Meeting Convened. An Adjourned Meeting of the York County Board of Supervisors was called to order at 6:00 p.m., Tuesday, June, 2001, in the East Room, York Hall, by Chairman James S. Burgett.

Attendance. The following members of the Board of Supervisors were present: Walter C. Zarembo, Sheila S. Noll, Donald E. Wiggins, and James S. Burgett.

H. R. Ashe was absent.

Also in attendance were James O. McReynolds, County Administrator; and James E. Barnett, County Attorney.

WORK SESSION

TEXT AMENDMENT TO YORK COUNTY ZONING ORDINANCE: MARINAS

Mr. McReynolds reviewed the meetings held by the Planning Commission and a citizens' committee leading up to tonight's work session and the draft materials forwarded to the Board of Supervisors. He indicated staff was recommending only one change to the Planning Commission recommendation which was to allow only three restaurant seats per slip instead of the recommended four.

Mr. Ashe arrived at 6:03 p.m.

Mr. J. Mark Carter, Planning and Zoning Manager, reviewed proposed Ordinance No. 01-10 to amend the Zoning Ordinance pertaining to marinas. He indicated that amendments to Section 24.1-104, Definitions, cleaned up the language by expanding on the definition of a marina. He noted the significant changes were contained in Sections 24.1-462 and 24.1-463 that establish certain performance standards applicable to the establishment of commercial or private/club marinas.

Mr. Ashe stated it came to his attention that he owned a piece of property with WC-I zoning on it, and he wanted to make the public and the Board aware of that information. He stated he felt the utilities were so far away from being established for that property that it could be 20 years before it could be developed. Mr. Ashe stated because of that he felt he could objectively proceed with acting on this application.

Mr. Barnett stated it was his opinion that Mr. Ashe could continue with consideration of this application, and that there was no conflict of interest.

Mr. Wiggins stated one of his concerns was that a restaurant has not been allowed in the WC-I district. He asked if the committee had never been formed, and the Zoning Administrator had never had any of these questions come before him, would his recommendation have been in

keeping with the existing regulations or would he have allowed restaurants in the WC-I zoning.

Mr. Carter stated he had interpreted the current ordinance to allow eating facilities as accessory uses to a marina based on existing language in the ordinance. He stated an eating facility is essentially a restaurant.

Discussion followed concerning the minimum square footage to be allowed per person in a restaurant facility that is an accessory use to a marina.

Mrs. Noll indicated the operative wording is that in no case will the County allow a more than a 150-seat facility.

Chairman Burgett indicated the only place his opinion differed was that he felt the Board needed to consider where the business was going to be placed. He stated he felt it was not the same as putting it in a general business zone. These facilities will be in residential areas; and out of all the houses in that area, only three have been built since the Dare Marina was built. Most of the marinas are located in residential areas.

Mr. Ashe expressed his concern about the adjacent neighbors, but stated he felt this was where the performance standards would come in to protect them.

Mr. Zaremba stated the County currently has an ordinance that addresses eating facilities that the Zoning Administrator has interpreted to mean restaurants. He noted that Dare Marina has submitted a site plan under the existing ordinance and is under some phase of approval.

Mr. Carter indicated the Phase 1 proposal has been given preliminary approval and that contains a 100-seat restaurant.

Mr. Zaremba stated he felt the Board was meeting tonight because the Board feels the existing ordinance is ambiguous and unsatisfactory. He asked if he would be grandfathered if he was one of the current marina owners.

Mr. Carter stated submission of a plan is not the key determinant; preliminary approval is.

Discussion followed on the enforceability of the performance standards proposed in Section 24.1-462(d)(2).

Chairman Burgett noted the Board was considering the allowance of a use that is not water-oriented to be implemented in the WC-I district. He stated he did not feel a restaurant was water-dependent or an integral part of a marina, and he did not agree with the elimination of the wording that indicated a restaurant would be only for boat crew members, owners, and guests. Mr. Burgett then referred to the alternate draft of May 30, stating he felt the wording should state "Marinas must include in-water berths/slips that are covered or uncovered. . ."

Mrs. Noll stated the current language provides flexibility.

Chairman Burgett stated he felt that in order for there to be a restaurant at a marina, there must be a real marina established first.

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Mr. Zaremba indicated that as he read the definition, if he had a facility on the water in York County and provided any one of those services, the facility could be called a marina and have a restaurant.

Mr. McReynolds stated the marina would have to have at least 20 wet slips that could accommodate boats of at least 16 feet in length in order to qualify for having a restaurant facility as an accessory use.

Chairman Burgett asked if it would be fair to say that if a restaurant is an accessory use that the prime source of income would be the marina.

Mr. Barnett indicated he would not say that the Board couldn't propose that, but he did not feel it would be something the Board would want to do.

Chairman Burgett stated he just did not want a lot of restaurants established as accessory uses to a facility that was not truly a marina.

Mr. Zaremba stated there was ambiguity in the definition of a marina, and the Board needed to come to an agreement as to what a marina is.

Mrs. Noll stated she felt it was all-inclusive and not ambiguous.

Mr. Wiggins indicated the ordinance was stating a marina could include all of these things; but before it could have a restaurant, it has to have 20 wet slips that accommodate boats that are a minimum of 16 feet.

Discussion followed on the demand for marinas in the County and Chairman Burgett's concern that the use of a business in a residential area was being intensified by the addition of restaurants.

Mrs. Noll suggested that the word "accessory" be used rather than "integral."

Chairman Burgett stated he felt that would be a good compromise.

Mr. Barnett explained that the term "accessory" was not clearly defined and would be hard to enforce in court. It has no universal meaning.

Chairman Burgett asked if wording such as "for owners, members, crews, and guests" could be added limiting the clientele.

Mr. Barnett stated the problem there was that there was no way to measure it. The idea of limiting the clientele to a restaurant might not be possible.

Chairman Burgett then addressed the timeframe in which trash pickup could take place, stating he felt 8:00 p.m. was too late in the evening for trash pickup.

Mrs. Noll suggested that the hours when trash pickup could not take place be changed to 6:00 p.m. to 7:00 a.m.

Chairman Burgett referred to the paragraph concerning the prohibition of specially designed dance floors, and he asked if the wording could be changed to just prohibit all "dance floors."

Mr. Carter indicated that in discussing this issue, the committee did not want the restaurant operated as a nightclub. They did mention that on occasion these restaurant facilities could be used for special functions where there might be dancing associated with it. He stated there was nothing in the ordinance to prohibit someone from renting the facility for a special occasion.

Mr. Ashe stated if the use is inside the facility and the performance standards are met, he felt the Board should not try to prohibit the activity taking place.

Mr. Wiggins stated he also would like to make sure that what the Board does with regard to the citizens and the marina be above-board and legal for all.

Mr. Ashe indicated that performance standards are key to the success of this ordinance. As long as they are reasonable and enforceable, then what goes on in the restaurant should be allowed as long as the standards are being met. Mr. Ashe then addressed the issue of the number of seats allowable in a marina restaurant facility, stating he did not see where 3 or 4 seats per slip would make any difference as long as the performance standards were met. He stated he believed that 15 square feet should be a minimum and not a maximum and let the market decide the number as long as it doesn't exceed 150 persons.

Mr. Carter stated the 15 square feet per seat is a given because it is the minimum in the building code. By using the proposed language, staff was trying to devise a way for reasonable long-term enforcement to be possible by limiting the dining area to a certain size.

After further discussion, the Board by consensus agreed that the maximum floor area of the dining space would be 30 square feet per authorized seat.

Mr. Ashe asked, regarding the paragraph concerning design standards, for a definition of the word "character."

Mr. Carter stated the paragraph contained language that states a guiding intent. The County does not have the authority under standard zoning to get into architectural control. The language was taken from the existing Zoning Ordinance performance standards for all retail and commercial uses. Mr. Carter indicated it was merely a statement of philosophy and a worthy objective.

Mr. Ashe then addressed the last sentence of the same paragraph, stating some footage needed to be added.

Mr. Carter indicated the intent of the sentence was to address the performance standards that followed. He recommended that the sentence be changed to read "For the purposes of the following performance standards, the term 'adjacent' shall be deemed to include properties located across a body of water."

Mr. Ashe next addressed the first performance standard regarding entrance distances, stating the main living structure should be the measuring point to the restaurant entrance.

Mr. Carter noted he felt the performance standards were all very workable with the existing marinas in the County. He stated there was always the use permit outlet, noting there could be sites that are too small to make it possible to fit the ordinance as written. He indicated the marina trade association has recommended that there should be a 50-foot distance between

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the restaurant and the nearest residence, but the committee felt that 100 feet was more appropriate.

Mr. Ashe then stated he felt strongly that the parking lot buffer should be a fence rather than landscaping. He stated he also felt that garbage should be dumped regularly and the receptacle sanitized. He asked how outdoor dining area would be calculated.

Mr. Carter noted that indoors and outdoors there could be no more than 150 seats total.

Chairman Burgett indicated he did not feel outdoor dining should be allowed until 10:00 p.m. He suggested that it be closed at 9:00 p.m.

Discussion followed concerning the required traffic impact study.

Mr. Zaremba asked for the rationale behind using 3 or 4 seats per wet slip to come up with the number of restaurant seats.

Mr. Carter stated that initially staff proposed three seats per wet slip after hearing all the committee discussion and presentation to the Planning Commission. The Virginia Outdoors Plan states that when planning water-oriented recreational facilities, a factor of 3 persons per boat occupancy load is the recommended standard. The Planning Commission heard testimony at the public hearing that indicated 4 was more likely the norm, and they recommended it.

Mr. Zaremba asked what assurances were present that indicated the County does not have any existing ordinance that would decrease the 100-foot distance between the entrances to the restaurant from residential structures.

Mr. Carter stated there are provisions in the current Zoning Ordinance that would allow less than 100 feet, but this ordinance proposes to establish an additional performance standard that goes above and beyond those already set out. It does not say the setback has to be 100 feet from the building, but that the main entrance and service entrance has to be. Mr. Carter stated there were no provisions currently that would require 100 or 200 feet.

Mr. Zaremba asked if there was anything in existing ordinances that allowed, under the same set of circumstances, a separation distance of less than 100 feet.

Mr. Carter stated there was for restaurants on Route 17, but not at marinas.

Discussion followed regarding the proposed operating hours of 6:00 a.m. to 10:00 p.m. for the restaurant.

Chairman Burgett noted he would also be interested in capping the hours of operation for the bar.

SIX-YEAR ROAD PRIORITY LISTING (Not on Agenda)

Mr. Carter briefly reviewed Resolution R01-113(R) that was adopted on June 5 clarifying language concerning the interstate system since the Board had given him the leeway to provide the appropriate language prior to adoption of the minutes. He also noted that at that time he was mistaken when he asked the Board to change Item No. 2 in the resolution to show the

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widening of Route 171 to be 6 lanes. He stated the resolution was correct citing 4 lanes, and noted the unapproved minutes would reflect such.

The Board then discussed the importance of a Board member being present at the upcoming July 12 VDOT public hearing.

Meeting Adjourned. At 8:30 p.m. Chairman Burgett declared the meeting adjourned sine die.

James O. McReynolds, Clerk
York County Board of Supervisors

James S. Burgett, Chairman
York County Board of Supervisors